REMARKS/ARGUMENTS

1.) Claim Amendments

The Applicants have canceled claims 3-13 and 28-38 without prejudice in response to the restriction requirement. The Applicants have amended claims 1, 2 and 17, and claims 3-16 and 28-38 have been canceled. No new matter has been added. Accordingly, claims 1-2 and 17-27 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Claim Rejections – 35 U.S.C. § 102(b)

The Examiner rejected claims 1, 17, 18, 20 and 26-27 under 35 U.S.C. § 102(b) as being anticipated by Noneman (US 5,708,656) ("Noneman"). As discussed herein, there are a number of differentiating features between the present invention and Noneman relating to the detection of access delay, the start of transmission and notification of the start of transmission from a lower layer to a higher layer. Nevertheless, the Applicants have amended claims 1, 2 and 17 to better distinguish the claimed invention from Noneman.

The preamble to each of amended claims 1 and 17 have been amended to clarify that the present invention concerns a *mobile* communication system. This amendment is supported at page 1, line 26. In addition, claims 1 and 17 have been amended to clarify that the lower layer is different from the physical layer and that the control procedure is performed on the lower layer. This amendment is supported at page 10, lines 7-23 of the application. Claims 1 and 17 have been further amended to add the step of "initiating the transmission with a variable channel access delay caused by a control procedure of the lower layer".

Referring now to Noneman, Noneman does not discuss, describe nor suggest the structure of the communication protocols used to implement his invention. With respect to claims 1 and 17, Examiner cites col. 1, lines 37-38 (frames are sent by the physical layer) as being analogous to detecting the start of a transmission by the lower

protocol layer. However, as noted in claim 1, the lower layer is not the same as the physical layer in the present invention.

Noneman discloses two inactivity time intervals along with a variable data rate including an idle rate, a default or intermediate rate, and a peak rate. When no packet data is available, the data rate is reduced to an idle rate. A first inactivity timer is started. The packet data service connection is thus maintained and the idle rate transmission of idle packets allows the receiving end of the channel to stay synchronized with the transmitter.

If the packet data transmission resumes before the first inactivity timer expires the transmission rate returns immediately to the peak rate. However, if the inactivity continues until the first inactivity timer expires, the data rate is not immediately returned to the peak rate. The packet data service connection is maintained at *the idle rate* after the first inactivity timer expires. When the second inactivity timer expires the packet data service is released. In Noneman, if packet data becomes available for transmission between the time the first inactivity timer expires and the second inactivity timer expires, the data packets are transmitted at the intermediate rate. After the transmitting source receives an acknowledgment from the receiving end of the channel, the data rate switches back to the peak rate. (See Noneman, col. 2, lines 18-54 and Figure 4).

It should be noted that in claims 1 and 17 of the present application, the feature of detecting the start of the transmission occurs on the lower protocol layer which is not the physical layer.

Anticipation requires identity of invention. The claimed invention, as described in appropriately construed claims, must be the same as that of the reference in order to anticipate. *Glaverbel Societe Anonyme v. Northlake Marketing & Supply Inc.*, 45 F. 3rd 1550, 33 U.S.P.Q. 2d 1496, 1498 (Fed. Cir. 1995).

Claims 20 and 26-27 depend directly or indirectly from amended claim 1 and recite further limitations in combination with the novel elements of claim 1. Claim 18 depends from amended claim 17 and recites further limitations in combination with the novel elements of claim 17. Therefore, the allowance of claims 1, 17-18, 20 and 26-27 is respectfully requested.

3.)   Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 2, 19 and 21-25 under 35 U.S.C. § 103(a) as being unpatentable over Noneman in view of Pasternak. The Applicants have amended the claim 1, from which claims 2 and 21-25 depend, and claim 17 from which claim 19 depend, to better distinguish the claimed invention from Noneman and Pasternak. More particularly, claims 1 and 17 have been amended to clarify that the lower layer is different from the physical layer and that the control procedure is performed on the lower layer. Claims 1 and 17 have been further amended to add the step of "initiating the transmission with a variable channel access delay caused by a control procedure of the lower layer

Noneman is discussed above. Pasternak discloses a point-to-multipoint microwave ATM network. ATM cell transmissions in the upstream direction are granted on a cell by cell basis. If two upstream cells coincide, one is shifted slightly in time, causing small cell delay variation (CDV). The downstream transmission consists of ATM cells encapsulated in MAC protocol data units (PDUs) and other overhead bits used for forward error correction (FEC) and synchronization. Small Subscriber Terminals (STs), including Subscriber Radio Units (SRUs), receive that broadcast and pass it to a Subscriber Access System (SAS) that drops the ATM cells addressed only to them. Each MAC PDU transmitted by the BS may include a grant for a specific ST. The grant specifies which ST is allowed to transmit but not which time slot.

The upstream transmission includes single ATM cells with their MAC and physical layer overhead. A modified trellis code modulation technique is used in the upstream transmission. The ATM traffic gathered from the STs is shaped by a cell jitter attenuator to reduce cell delay variation (CDV) occurring over the link. The Base Sector Controller (BSC) includes the master MAC controller and application-specific processing circuits and software (see Pasternak, col 2, lines 7-67 and col 3, lines 1-22, col. 8, lines 7-67, col 9, lines 1-58, col 10, lines 1-58, col. 11, lines 23-67, col. 12, lines 23-38 and Figure 10).

Pasternak does not disclose, teach or suggest the step of detecting the start of a transmission by a lower layer, which is not a physical layer, as set forth in amended

claims 1 and 17. The combination of Noneman and Pasternak does not disclose, teach or suggest detecting the start of a transmission by a lower layer, which is not a physical layer.

Claims 2 and 21-25 depend from amended claim 1 and recite further limitations in combination with the novel elements of claim 1. Claim 19 depends indirectly from amended claim 17 and recites further limitations in combination with the novel elements of claim 17. Therefore, the allowance of claims 2, 19 and 21-25 is respectfully requested.
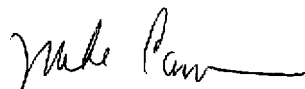
CONCLUSION

In view of the foregoing remarks, the Applicants believe all of the claims currently pending in the Application to be in a condition for allowance. The Applicants, therefore, respectfully request that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 1-2 and 17-27.

The Applicants request a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

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